

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Joseph A. Dunston,

Petitioner,

vs.

Warden Braggs,

Respondent.

C/A No. 5:18-cv-00028-TMC-KDW

ORDER

This case is before the court because of Petitioner's failure to comply with the magistrate judge's Order of April 5, 2018. (ECF No. 7). A review of the record indicates that the magistrate judge ordered Petitioner to submit items (filing fee and court-approved petition form) needed to render this case into proper form within twenty-one days, and specifically informed Petitioner that if he failed to do so, this case would be dismissed without prejudice. *Id.* The court has not received any response from Petitioner and the time for his compliance has passed. The mail in which the Order was sent to Petitioner at the address provided when the case was filed has not been returned to the court, thus it is presumed that Petitioner received the Order, but has neglected to comply with it within the time permitted under the Order.

Petitioner's lack of response to the Order and his failure to provide an updated mailing address information indicates his intent to not continue prosecuting this case, and subjects this case to dismissal. *See* Fed. R. Civ. P. 41(b) (stating district courts may dismiss an action if a Petitioner fails to comply with "any order of the court."); *see also Choice Hotels Int'l, Inc. v. Goodwin & Boone*, 11 F.3d 469, 471-72 (4th Cir. 1993) (holding that dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.

1982) (court may dismiss *sua sponte*).

Accordingly, this case is dismissed *without prejudice*. The Clerk of Court shall close the file.¹

IT IS SO ORDERED.

May 14, 2018
Anderson, South Carolina

s/Timothy M. Cain
United States District Judge

¹ Under General Order, Misc. No. 3:07-5014-JFA, this dismissal *without prejudice* does *not* count as a “strike” for purposes of the “three strikes” provision of 28 U.S.C. § 1915(g). If Petitioner wishes to bring this action in the future, he should obtain new forms for doing so from the Clerk’s Office in Columbia (**901 Richland Street, Columbia, South Carolina 29201**).

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within the time period set forth under Rules 3 and 4 of the Federal Rules of Appellate Procedure.
